


County of San Bernardino

Department of Behavioral Health

Fraud, Waste and Abuse Prevention Policy

Effective Date 1/22/07
Approval Date 1/22/07


Allan Rawland, Director

Policy

- The Department of Behavioral Health (DBH) will maintain a comprehensive auditing, monitoring, and reporting program to prevent, detect and correct fraud, waste and abuse.
 - All DBH employees, contractors and other workforce members have a duty to participate in efforts to prevent fraud, waste and abuse and ensure that public resources are used ethically, prudently and for legally designated purposes.
-

Purpose

- To fulfill a mandate identified in the amended Social Security Act (via the Deficit Reduction Act of 2005) that requires entities who receive or make annual Medi-Cal payments of at least \$5,000,000 to develop and maintain a written policy to inform staff and contractors of information about the Federal and State versions of the False Claims Act.
 - To communicate the policy and systems for preventing, detecting and correcting fraud, waste and abuse.
-

References

- California Government Code § 12650-12656
 - United States Code Title 18 – Federal Criminal False Claims
 - United States Code Title 31 – Federal Civil False Claims
 - Deficit Reduction Act of 2005
-

Definitions

- **Auditing:** review and examine records or accounts to check the accuracy of the information.
 - **Monitoring:** test processes on an ongoing basis to document compliance with policies, procedures, laws or regulations.
 - **Fraud:** an intentional deception or misrepresentation that an individual knows, or should know, to be false that could result in some unauthorized benefit to the individual or another.
 - **Waste:** the extravagant, careless or needless expenditure of funds or consumption of resources that results from deficient practices, poor systems controls or bad decisions. Waste may or may not provide any personal gain.
-

County of San Bernardino

Department of Behavioral Health

False Claim

A false claim occurs when an individual or entity knowingly submits a claim for reimbursement, or false documentation for a claim, to a State or Federal payer source for a service or product despite the quality or quantity of that service or product not fulfilling the requirements associated with those goods or services. A partial list of potential mental health-related false claims includes the following:

1. **Double billing**: Submitting more than one claim for the same service.
2. **Lacking a case note**: An authorized service for an eligible client provided by an appropriately licensed clinician but lacking a proper case note that documents the service and establishes medical necessity.
3. **Case note lacking a signature and/or date**: Same as # 2 but lacks the clinician's signature and/or date.
4. **Out of scope practice**: An authorized service for an eligible client with all appropriate documentation being completed but performed by a clinician lacking the necessary training and license (or registration).
5. **Expired license or registration**: Any clinical service that requires a licensed or registered clinician but is provided by a person with an expired, suspended, or revoked license or registration.
6. **Upcoding**: Using an inaccurate diagnosis or claiming an inaccurate procedure code that has a higher reimbursement rate than is appropriate for the client's condition or the service actually rendered.
7. **Overcharging**: Claiming more minutes (or other applicable reimbursement criteria) than actually provided.
8. **False claim**: Claiming for a service that was never provided.

A false claim related legal case could be filed against an individual or entity by the Department of Health and Human Services, Office of the Inspector General (OIG), other Federal or State agency.

Whistleblower Provision

The State and Federal False Claim Act statutes include a section known as the Qui Tam or Whistleblower provision that authorizes private citizens to:

1. Report false claim violations directly to the government
2. File a False Claims Act legal case against an individual or an entity. The government may join such a legal case but is not obligated to do so. This provision includes non-retaliation protections when exercised in good faith.

Remedies

There are administrative, civil, and/or criminal remedies available to the government under Federal and State laws, including but not limited to the following:

County of San Bernardino

Department of Behavioral Health

1. Repayment of falsely claimed amounts
2. Civil remedies may also require the payment of substantial financial penalties (could include treble damages and/or \$10,000 per false claim) in addition to the repayment for the actual amount received.
3. Criminal remedies may require the repayment of funds received based on the false claim, plus substantial financial penalty fees, plus convicted individuals could receive prison sentences.
4. Individuals or entities convicted of certain civil or criminal violations may be excluded from receiving any payment for services or products from all federally funded health care programs for a specific term.

Office of Compliance

The Office of Compliance will:

1. Provide education and information to DBH staff and contract agencies regarding the duty to report and available protections for reporting compliance issues.
2. Maintain an auditing and monitoring plan that is reviewed annually and updated as needed. This plan includes but is not limited to training, policy and procedure reviews, privacy and security audits, action plans, audits of program activities, claims review and other auditing and monitoring activities to detect, deter and correct fraud, waste and abuse.
3. Coordinate the investigation of any reports of alleged fraud, waste or abuse and obtain documentation as to the resolution of the reports
4. Ensure that restitution, corrective action and asset recovery actions are completed and properly documented.
5. Investigate any reports of actual or suspected retaliation against good faith reporting of issues.

Management/ Supervisor Responsibilities

1. Create an environment of honesty and ethics within each manager/supervisor span of control.
 - a) Provide employees with clear direction about work expectations and internal controls.
 - b) Actively discourage manipulation of clients, vendors or others for advantage.

County of San Bernardino

Department of Behavioral Health

2. Reduce opportunities for fraud, waste, and abuse by implementing strong internal controls that detect and deter dishonest behavior.
3. Ensure that employees are aware of the options available for reporting fraud, waste, and abuse and other compliance issues.
4. Establish an environment free from intimidation and retaliation to encourage open communication.
 - a) Ensure that employees, contractors or other workforce members who report issues are not subject to intimidation, harassment, or other forms of retaliation for reporting issues in good faith.
 - b) Immediately address any and all forms of retaliation by co-workers.
 - c) Actively discourage conduct that could be perceived as retaliatory.

Individual Responsibilities

1. Perform duties in a way that promotes the public trust and ensures proper expenditures and use of County assets and property.
 2. Employees, contractors, volunteers, and other individuals have a duty to report actual or suspected violations of law, regulations or policy including fraud, waste, and abuse to appropriate authorities. Additional information is included in State and Federal false claims statutes (See pages 5-8).
 3. Cooperate with investigations of compliance issues.
-

County of San Bernardino

Department of Behavioral Health

Federal False Claims Requirements

1. Civil False Claims

- a. 31 U.S.C. Section 3729 (a) prohibits any individual/entity from knowingly submitting or causing the submission of a false or fraudulent claim for payment to the US government. The civil penalty for a false claim is not less than \$5,000 and not more than \$10,000, plus three times the amount of damages.
- b. 31 U.S.C. Section 3729 (b) defines "knowingly" as having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, acting in reckless disregard of the truth or falsity of the information. The government does not have to prove that the person intended to defraud the government.
- c. 31 U.S.C. Section 3730 includes "Qui Tam" provisions that allow private citizens (relator) to sue violators on behalf of the government. The government can take over the prosecution or allow the relator handle the case.
 - i. If the government takes over the case and wins, the qui tam relator is eligible for 15-25% share of the recovery.
 - ii. If the relator handles the case and wins, the relator is eligible for 25-35% share of the amount recovered.
 - iii. If the action is initiated by a relator who planned and initiated the violation, then the court may reduce the share of the proceeds. If the relator bringing the action is convicted of criminal conduct arising from the violation of the False Claims Act, then he/she shall not receive any proceeds from the action.
 - iv. If defendant prevails and the court finds that the qui tam relator was clearly frivolous, clearly vexatious, or took action for the purposes of harassment, then the court may award to the defendant reasonable attorney's fees and expenses.

2. Criminal False Claims

- a. False Statements relating to Health Care Matters - 18 U.S.C. Section 1035 criminalizes of any false or fictitious statements "in any manner involving a health care benefit program". The penalty is up to 5 years in prison and a \$25,000 fine.
- b. Federal Criminal False Statements - 18 U.S.C. Section 1001 specifies that whoever knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document which contains any materially false, fictitious,

County of San Bernardino Department of Behavioral Health

or fraudulent statement or entry, shall be fined or imprisoned not more than 5 years, or both.

- c. Federal Criminal False Claims Act - 18 U.S.C. Section 287 states, "Whoever makes or presents... any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine.."
 - d. Health Care Fraud – 18 U.S.C. Section 1347
 - i. Activity by anyone who knowingly and willfully demands any health care benefit program or obtains, by means of false presentations, any money or property of a health care benefit program.
 - ii. A health care benefit program is defined by federal law as any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.
 - iii. The penalties for health care fraud include prison and fines.
 - e. Obstruction of Criminal Investigations of Health Care – 18 U.S.C. Section 1518: Anyone who willfully prevents, obstructs, misleads, delays or attempts to do these things in communication of information or records relating to a violation of a Federal health care offense can face up to 5 years in prison and fines.
3. Whistleblower Protections - 31 USC Section 3730 (h) protects employees against discharge, demotion, suspension, threats, harassment, or discrimination by the employer because of lawful acts done by the employee pursuant to the False Claims Act, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under this section.

California False Claims Act Provisions

- 1. California Government Code Section 12650 definitions:
 - a. "Claim" includes any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision...whether under contract or not, if any portion of the money...was provided by the state (hereinafter "state funds") or by any political subdivision thereof (hereinafter "political subdivision funds").
 - b. "Knowing" and "knowingly" mean that a person, with respect to

County of San Bernardino Department of Behavioral Health

information, does any of the following:

- i. Has actual knowledge of the information.
 - ii. Acts in deliberate ignorance of the truth or falsity of the information.
 - iii. Acts in reckless disregard of the truth or falsity of the information. Proof of specific intent to defraud is not required.
 - c. "Political subdivision" includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries.
 - d. "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.
2. California Government Code Section 12651 states a person can be liable for three times the amount of damages and also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and may be liable for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim if the person, among other prohibited behavior:
- a. Knowingly presents or causes to be presented to... the state or of any political subdivision thereof, a false claim for payment or approval.
 - b. Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision.
 - c. Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision.
 - d. Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay...the state or to any political subdivision.
 - e. Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.
3. The California False Claims Act also includes provisions that allow a private citizen to bring a civil action for a violation of this article as a "qui tam plaintiff".
- a. If the Attorney General or local prosecuting authority take over the case and prevail, the qui tam plaintiff may receive between 15% and 33% of the proceeds as determined by the court.
 - b. If the Attorney General or local prosecuting authority does not proceed and the qui tam plaintiff prevails, the qui tam plaintiff may

County of San Bernardino Department of Behavioral Health

receive between 25% and 50% of the proceeds as determined by the court.

- c. There is no guaranteed minimum recovery for actions initiated by:
 - i. Present or former employees of the State or political subdivision (this includes County employees).
 - ii. Present or former employees who actively participated in the fraudulent activity.
- d. If defendant prevails and the court finds that the qui tam plaintiff was clearly frivolous, clearly vexatious, or took action for the purposes of harassment, then the court may award to the defendant reasonable attorney's fees and expenses.

4. Whistleblower Protections

- a. California Government Code Section 12653 provides protection for employees by preventing employers from making, adopting, enforcing any rule, regulation or policy that would prevent an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action.
 - b. California Government Code 12653 also requires that no employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against, an employee...because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under the California False Claims Act.
-